Filed 11/5/10 G.W. v. Superior Court CA5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

G.W.,

Petitioner,

v.

THE SUPERIOR COURT OF MERCED COUNTY,

Respondent;

MERCED COUNTY HUMAN SERVICES AGENCY,

Real Party in Interest.

F060778

(Merced Sup. Ct. No. JP000089)

O P I N I O N

THE COURT[*]

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Harry L. Jacobs, Commissioner.

William A. Davis for Petitioner.

No appearance for Respondent.

James N. Fincher, County Counsel, and James B. Tarhalla, Deputy County Counsel, for Real Party in Interest.

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[*] Before Levy, Acting P.J., Poochigian, J. and Detjen, J.

Petitioner seeks an extraordinary writ (Cal. Rules of Court, rules 8.450-8.452) from the juvenile court's orders issued at a contested six-month review hearing terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing[1] as to petitioner's minor daughter G. We will deny the petition.

STATEMENT OF THE CASE AND FACTS

In September 2009, then two-year-old G. was detained by officers of the Merced Police Department when they responded to a report of domestic violence and drug use at petitioner's address. Petitioner was arrested for spousal abuse and resisting arrest. G.'s mother, D.P., was arrested for an outstanding warrant resulting from a prior incident of domestic violence in which petitioner was the victim. The juvenile court ordered G. detained and she was placed with a relative.

In October 2009, at a combined jurisdictional/dispositional hearing, the juvenile court exercised its dependency jurisdiction and ordered both parents to participate in a plan of reunification. Petitioner's services plan required him to complete a parenting education program. It also required him to complete assessments for domestic violence and substance abuse and participate in any recommended treatment and submit to random drug testing. D.P.'s services plan was identical. The juvenile court set the six-month review hearing for April 2010 and advised petitioner the court could terminate reunification services after six months because G. was under the age of three years when originally detained.[2]

In its report for the six-month review hearing, the Merced County Human Services Agency (agency) recommended the juvenile court terminate reunification services for petitioner and D.P. The agency informed the court that D.P. was not participating in any

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] D.P. was not present at the hearing to hear the juvenile court's advisement.

of her services and she and petitioner were living together. Petitioner, on the other hand, completed a parenting class and had begun a 16-week domestic violence class. He also completed a substance abuse assessment, resulting in a recommendation for outpatient treatment only if he tested positive for drugs or alcohol. Petitioner tested negative monthly in November and December 2009 and in March 2010 with negative results. However, he arrived intoxicated in late March 2010 for a visit. He admitted to getting drunk with his brother the night before.

The agency also reported that petitioner regularly visited G. and properly engaged her. Conversely, D.P. minimally interacted with G. and spent most of her time talking on her cell phone.

The hearing on the six-month review was continued and conducted as a contested hearing in August 2010. By that time, petitioner had completed the domestic violence course. He testified he and D.P. were still living together and he recognized she had a lot of progress to make in her services. However, he said he could not force her to leave, knowing she had nowhere to go. Their plan was that D.P. would move out of the house if G. was returned to petitioner's custody. However, petitioner also testified that he would be satisfied with G. being placed under guardianship with her caretaker as long as he could visit and retain his parental rights.

At the conclusion of the hearing, the juvenile court found by clear and convincing evidence that petitioner and D.P. failed to regularly participate in and make substantive progress in their court-ordered treatment plans. Consequently, the court terminated their reunification services and set a 366.26 hearing. This petition ensued.[3]

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[3] D.P. did not file a writ petition.

DISCUSSION

Petitioner contends he completed his reunification plan and had a plan in place to care for G. and protect her from D.P. He does not, however, argue the juvenile court should have returned G. to his custody. Rather, he argues, the court should have continued his reunification services. We disagree.

Section 361.5, subdivision (a)(1) sets forth the statutory time limits for reunification services. In the case of a child such as G. who was under the age of three years on the date of initial removal, the statute provides six months of services beginning with the dispositional hearing and ending 12 months after the date the child entered foster care. (§ 361.5, subd. (a)(1)(B).) A child is considered to have entered foster care on the earlier of the date of the jurisdictional hearing or the date that is 60 days from the date the child was initially removed from the physical custody of the parent(s). (§ 361.49.) In this case, G. was initially removed from petitioner's custody in September 2009, 60 days from which was November. Since the jurisdictional hearing was conducted on the earlier date of October 2009, it marks the beginning of the 12-month period of reunification. October 2009 also marks the beginning of the six months since that is the date of the dispositional hearing. Consequently, the six-month period of reunification services for petitioner ran from October 2009 to April 2010 with an outside limit of 12 months ending in October 2010.

Further, the juvenile court may schedule a section 366.26 hearing at the six-month review hearing if it finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in reunification services. (§ 366.21, subd. (e).) If, however, the court finds there is a substantial probability the child may be returned to parental custody within another six months, the court must continue the case to the 12-month review hearing. (*Ibid*.) In assessing whether there is a substantial probability of return, the juvenile court must find the parent made significant progress

and demonstrated the ability to safely parent the child. (§ 366.21, subd. (g)(1)(B) & (C).)[4]

By the time the juvenile court conducted the six-month review hearing in August 2010, petitioner had technically complied with his case plan insofar as he completed the required services. However, he was still living with D.P. who, in the court's view, was abusing drugs and was resistant to treatment. Under the circumstances, the court did not believe D.P. could complete her services by October 2010 or that petitioner would bring himself to separate from her. In fact, petitioner stated several times during his testimony that he could not abandon D.P. He even testified he preferred placing G. in guardianship to avoid having to do so.

It is for the above reasons we conclude the juvenile court correctly assessed the probability of return in this case. Although petitioner personally made progress, his overall progress was not significant. He was still living with the woman with whom he used drugs and fought and she had not addressed either problem. Consequently, in her

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[4] With respect to the juvenile court's finding of a substantial probability of return, section 366.21, subdivision (g)(1) provides in relevant part:

"[I]n order to find a substantial probability that the child will be returned to the physical custody of his or her parent … and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

> "(A) That the parent … has consistently and regularly contacted and visited with the child.
>
> "(B) That the parent … has made significant progress in resolving problems that led to the child's removal from the home.
>
> "(C) The parent … has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs."

There is no dispute that petitioner regularly visited G.

company, there was reason to believe the circumstances that necessitated G.'s removal could reoccur and little reason to believe it would change with several more months of services. Further, as long as D.P. was living in the home, petitioner could not ensure G.'s safety.

We conclude, on these facts, the juvenile court correctly found there was not a substantial probability of return and properly terminated petitioner's reunification services. We find no error.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.